

### Remarks

Applicant respectfully requests reconsideration and allowance of the claims. Claims 1-16 are pending with claims 2, 8-10 and 12-16 currently under examination. Claims 1, 3-7 and 11 have been withdrawn from consideration as being drawn to a non-elected invention.

Claims 2 and 13 stand rejected under 35 U.S.C. §102(e)/§103(a) and §102(a)/§103(a) as being unpatentable over U.S. 6,072,037 ('037 patent) in view of Chabaud *et al.*, and claims 8-10, 12 and 14-16 stand rejected under §102(e)/§103(a) and §102(a)/§103(a) in further view of Arend, *et al.*

The Examiner clarified that the rejections under §103(a) are proper and that the '037 patent qualifies as prior art under both §102(a) and §102(e).

### *Objections and Rejections Withdrawn*

Applicant acknowledges that the Examiner's objection to the specification has been withdrawn. The latest Office Action did not state that the rejection under §102(e)/§103(a) has been withdrawn even though Applicant has established common ownership between the '037 patent and the subject application. Applicant respectfully requests that the rejection be properly withdrawn.

### *§102(a)/§103(a)*

In response, Applicant has filed a Declaration under 37 CFR §1.131 (see, MPEP 715). The Declaration establishes a constructive reduction to practice prior to the date on which the '037 patent became available as prior art (*i.e.*, its issue/publication date of June 6, 2000).

The Declaration is based on the original Immunex Invention Notice that prompted the preparation and filing of the subject application. The Invention Notice was submitted prior to June 6, 2000 (Exhibit A). As outlined in the Declaration, the suggested title of the invention was "Use of IL17 antagonists in rheumatoid arthritis."

The Invention Notice describes the potential clinical uses of IL-17 antagonists in either direct, combination or adjuvant therapeutic modalities for rheumatoid arthritis. It

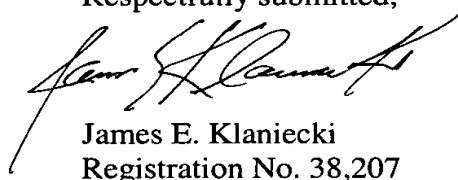
Appl. No. 10/033,522  
Amdt. & Reply dated March 11, 2004  
Resp. to OA dated September 17, 2003

also states that IL-17 antagonists might be particularly useful in cases of RA that are refractory to therapeutic intervention with other known RA antagonists.

Thus, the supporting evidence establishes that the subject matter of the present claims was invented prior to the June 6, 2000 issue date of U.S.P.N. 6,072,037. As such, the rejection under §102(a)/§103(a) may be properly removed.

All issues raised by the Examiner have been fully addressed and Applicant respectfully submits that the pending claims are in condition for allowance. If any issues remain, the Examiner is invited to call Applicant's representative at the number provided below.

Respectfully submitted,



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**CERTIFICATE OF EXPRESS MAILING**

I hereby certify that the enclosed correspondence is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR §1.10, and is addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date indicated below.

Date:

March 16, 2004

Signed:



Nanci M. Kertson